

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

BANK OF COMMERCE,

Plaintiff(s),

vs.

THE BUSINESS BANK OF ST. LOUIS,

Defendant(s).

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Case No. 4:11CV428 JCH

**MEMORANDUM AND ORDER**

This matter is before the Court on Plaintiff's Motion to Dismiss Defendant's Counterclaims, filed April 21, 2011. (Doc. No. 11). Having considered the parties' submissions, the Court agrees with Plaintiff that Defendant's Counterclaims must be dismissed for failure to join a necessary party, because the actions, rights, and authority of the Federal Deposit Insurance Corporation ("FDIC") are at issue in this matter, and the Court cannot grant rescission or accord complete relief unless and until the FDIC is made a party. See Fed.R.Civ.P. 19; see also American Nat. Ins. Co. v. JPMorgan Chase & Co., 705 F.Supp.2d 17 (D.D.C. 2010).

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff's Motion to Dismiss Defendant's Counterclaims (Doc. No. 11) is **GRANTED** in part<sup>1</sup>, and Defendant's Counterclaims are **DISMISSED** without prejudice.

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<sup>1</sup> Absent the participation of the FDIC, the Court finds itself unable to address the parties' contentions regarding, among other things, whether the FDIC effectively repudiated the Participation Agreement under FIRREA.

**IT IS FURTHER ORDERED** that Defendant is granted until **Monday, June 27, 2011**, within which to file an Amended Counterclaim.<sup>2</sup>

Dated this 6th day of June, 2011.

/s/ Jean C. Hamilton

UNITED STATES DISTRICT JUDGE

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<sup>2</sup> Should Defendant elect to assert the same allegations as put forth in its original Counterclaim, it must add the FDIC as a Defendant to said claims.